

Only a licensed distributor may sell cigarettes to another licensed distributor without charging the tax. See 35 ILCS 130/2. (This is a GIL).

September 16, 2002

Dear Xxxxx:

This letter is in response to your letter received in Legal Services on June 3, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

I am doing business in the state of Illinois as COMPANY and my tax id number is ##.

I would like a Private letter ruling on the following issue:

One of my competitors is selling cartons of name-brand cigarettes \$6.00 a carton cheaper than my lowest supplier can sell them to me. This competitor recognizes my tax exempt status on all other purchases but refuses to sell me cigarettes as tax exempt. They have told me at store level, and at office level that it is not only illegal for them to sell me cigarettes for me to resale, but it is illegal for me to buy them at any retail outlet to resale. I have spoke with two people with your department and neither of them have heard of such a case and have told me that they think this competitor has a legal obligation to honor my tax-exempt status. They have recommended that I contact you for a ruling on this issue that I can take to my competitor. Please fax your ruling to:

NAME/ADDRESS

The Cigarette Tax is imposed upon any person who exercises the privilege of engaging in business as a retailer of cigarettes in this State. See 35 ILCS 130/2. The tax is imposed upon the retailer with the distributor required to prepay or pre-collect the tax. The amount of the tax must be added to the price of the cigarettes sold by such distributor. Collection of the tax must be evidenced by a stamp or stamps affixed to each original package of cigarettes, as provided in the Cigarette Tax Act and in the regulations. See 86 Ill. Adm. Code Part 440.

Section 440.50 of the regulations allows the Department, or any person authorized by the Department, to sell tax stamps only to licensed distributors. It is unlawful for any person to engage in the business as a distributor of cigarettes in this State without first having obtained a license or permit therefor from the Department.

The first distributor who delivers cigarettes or causes them to be delivered in this State to a purchaser is required to affix a proper stamp or stamps to each original package of such cigarettes before delivering such cigarettes (or causing them to be delivered) in this State to the purchaser. The term "purchaser" used in this context is the end user and not another distributor who intends to resell the cigarettes. A licensed distributor may sell cigarettes to another licensed distributor without charging the tax. However, sales to persons that cannot claim an exemption under the Cigarette Tax (e.g. resale) must be made on a tax-paid basis.

Unless your competitor is a licensed distributor and you are a licensed distributor, the cigarettes may not be sold free of Cigarette Tax. Although you have the capability of providing a resale certificate for sales tax purposes, this resale number cannot be used to claim purchases of cigarettes under the Cigarette Tax Act.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk
Enc.